

Dear Roberto,

As briefly mentioned yesterday I now send you some ETNO comments on some key provisions within the draft Single Market Regulation.

The goal of these these comments is to address some of the issues at a technical level. Annex I contains technical comments on Net Neutrality, Ex-Ante Price and Access Regulation and EU Passport, while Annex II addresses Consumer Issues.

Our aim was to attempt to demonstrate where the current text is not clear or could have detrimental effects maybe not thought of.

We are aware of the fact that this not a final proposal/text, however we hope you find these text proposals to be helpful at this stage of the process.


Please don't hesitate to let us know if anything needs clarified or raises further questions.

Many thanks and kind regards,







European Telecommunications Network Operators Association (ETNO)
Avenue Louise, 54
B-1050 Brussels
Belgium
Tel: +32(2) 

I. NET NEUTRALITY – ART. 20

1. Non-discriminatory traffic management to manage congestion should remain possible
2. Provision on fight against spam should take into account practical restrictions

Why is it important?

- 1) Non-discriminatory traffic management is indispensable already today to ensure provision of services to end-users at adequate quality and functionality. This is the case for mobile networks with constrained capacity in the mobile cell, but similar restrictions apply in fixed networks at peak hours.
- 2) Effectively preventing spam and other unsolicited communications requires measures at network level that cannot be made customer specific. Therefore ‘prior (individual) consent cannot be required. This has been recognised by Dutch NRA ACM that is confronted with the same text and accepts that operators include this consent in general conditions.¹

Why is it not ensured under the current text:

- 1) While Article 20 (1) covers the freedom of end-users, operators and application and content providers to enter into agreements over different features of a service, Art. 20 (2) covers traffic management outside of such cases and in particular lays down a ban on blocking and throttling of specific services or applications. It thereby also restricts traffic management practices that apply in a non-discriminatory manner to all services of a specific type of application or service (such as e.g. voice, video etc.) and has as its sole purpose to ensure adequate service provisioning irrespective of the source or addressee of the service, app or content in question. Including an exemption for “exceptional” congestion is far too restrictive, as such management is necessary on a day-to-day basis in crowded cells, at peak times etc.
- 2) Art 20 (2) requires user consent to anti-spam measures which is not practicable (s. above).

The following changes to the current draft would achieve these objectives (for illustration):

Article 20 - Quality of service, freedom to provide and avail of open internet access and reasonable traffic management

[...]

2. Within the limits of any contracted data volumes or speeds, providers of electronic communications to the public shall not restrict the foregoing freedoms by employing traffic management practices solely or primarily to block, slow down or otherwise degrade specific services or applications, or specific classes thereof, unless, and only to the extent that, such restrictions are necessary to:
 - a) implement a legislative provision or a court order;
 - b) preserve the integrity and security of the network, services provided via this network, and the end-users' terminals;
 - c) prevent the transmission of unsolicited communications to end-users ~~who have given their prior consent to such restrictive measures~~ ;
 - d) minimise the effects of **exceptional** congestion provided that equivalent types of traffic are treated equally.

[...]

¹ ACM recognises the need for network level measures, being also very active in supervising the anti-spam provisions in the legislation and not willing to accept that net neutrality is interpreted in such a way that it restricts effective anti-spam measures.

II. EX-ANTE PRICE AND ACCESS REGULATION

This section covers four key areas:

- The European virtual broadband access product (Art. 14, 16, 28 and Annex I)
- The ASQ product (Art. 15, 16 and Annex II)
- The lifting of price regulation for NGA wholesale products (Art. 28 (4))
- Deregulatory guidance on the 3-criteria-test (Recitals 16, 17)

1. European virtual broadband access product (Art. 14, 16, 28 and Annex I)

Key requirements:

- Ensure the European wholesale product is **imposed instead of an existing product and does not add an additional layer of regulation.**
- Ensure that the **imposition of the European wholesale products and any variations thereof** is demonstrably **justified by a market failure** identified in the retail market.
- Ensure that the **technical requirements set out in Art. 14 and Annex I are proportionate**, practical and do not increase the regulatory burden on the sector.

1.1 Ensuring that European wholesale products do not add another layer of regulation

Why is it important?

As recognised in the draft non-discrimination and costing recommendation and as underlined by several recent studies (s. e.g. Plum consulting, Valletti, Gerardin, “Relevant Markets in the Telecoms sector - the times they are-a-changing”, June 2013), multiple access layers increase regulatory costs and reduce flexibility for retail product development and pricing, negatively affecting NGA investment. The regulation should simplify and where possible reduce access regulation, not increase complexity and add new products to sit alongside existing ones.

It is also important to closely link European standardised products to a market failure observed at retail level in the context of a market analysis. For example, retail business services markets mentioned in Recital 33 are sustainably competitive in many member states and /or wholesale products are available on the market on commercial terms. The need for any imposition of regulated business grade wholesale products varies accordingly.

Why is it not ensured under the current text?

Both Art. 14 (1) Nr. 5 and Recital 33 imply that the European product(s) might be added “alongside” existing products. Article 28, changing Article 12 of the Access Directive, is clearer on the character of the European product as a substitute², but implies that several European wholesale products may replace one existing product.

Changes to the text that together could achieve the objective are listed below for illustration:

– **Art. 28 (3)**

The following sub-paragraph shall be inserted at the end of 12(2):

In assessing the proportionality of possible imposition of obligations pursuant to paragraph 1 in respect of next-generation networks, national regulatory authorities shall assess the

² Art 28 (3) and (4) talk about European products being “an alternative to an existing passive wholesale input” (for layer 1) and being imposed “instead” of an existing product (layer 2).

*proportionality of imposing a non-physical or virtual wholesale input offering equivalent functionalities, and in particular a European virtual broadband access product within the meaning of Article 14 and of Annex I.1 of Regulation [XXX/2014] and as further defined in Commission implementing measures pursuant to Article 16(1) of that Regulation, **substituting existing as an alternative to a** passive wholesale inputs such as physical unbundled access to the local loop or the sub-loop. **In this context, NRAs should also assess the proportionality of imposing wholesale inputs when there is infrastructure competition based on wholesale access to passive infrastructure such as ducts or by other means.** In so doing, the national regulatory authorities should have regard to **the investments by the regulated undertaking as well as** existing investments by access-seekers in one or the other form of wholesale access, and to the amortisation period for such investments.*

– Article 12(4), (5) and (6) shall be inserted:

*4. Notwithstanding paragraph 3 and the timing of the analysis of relevant markets in accordance with Article 16(6) of Directive 2002/21/EC (Framework Directive), a national regulatory authority which has **pursuant a market analysis process** imposed on an operator in accordance with the provisions of this Article an obligation to provide physical unbundled wholesale access to a next-generation network shall consider whether it would be proportionate to impose instead an obligation to supply **an access inputs** that meets the criteria of a European virtual broadband access product with equivalent functionalities as defined in Article 14 and Annex I.1 of that Regulation and as further defined in such implementing measure, in particular in the presence of infrastructure competition. **The above does not apply in case such obligations for passive wholesale access to a next-generation network has been imposed independent of a market analysis procedure on all concerned electronic communications providers pursuant Article 12 Framework Directive.** Such obligation shall be subject to the application of the procedure in Articles 6 and 7 of the Framework Directive.*

5. Notwithstanding paragraphs 3 and 4, where a national regulatory authority has imposed or intends to impose on an operator in accordance with the provisions of this Article an obligation to provide virtual broadband access as defined in Regulation [XXX/2014], that national regulatory authority shall instead impose an obligation to supply ~~one or more~~ a corresponding access inputs that meets the criteria of a European virtual broadband access product as defined in Article 14 and in Annex I of that Regulation. [...]

– **Art. 14 (1)**

Article 14 – European virtual broadband access product

1. Offers of virtual broadband access products imposed in accordance with Article 8 and 12 of Directive 2002/19/EC shall be deemed to be European virtual broadband access products if they cumulatively meet the following criteria:

[...];

5 cost-effectiveness **of implementing the products,**³ taking into account the capacity to be implemented on existing and newly built networks ~~and to co-exist with other access products that may be provided on the same network infrastructure;~~

[...]

- **Article 16**

European measures relating to European access products.

³ S. below under 1.2 for the reasoning on the change.

Single Market for Electronic Communications – Technical comments on key provisions

The Commission shall adopt by [1 January 2016] implementing measures in accordance with Article 27 laying down more detailed technical and methodological rules for the implementation of European virtual broadband access product within the meaning of Article 14 and of Annex I.1, in accordance with the criteria and parameters specified therein and in order to ensure the equivalence of the functionality of such a virtual wholesale access product to next-generation networks with that of a physical unbundled access product. ***Technical and methodological rules should be defined in a standardisation procedure with the industry or by a European standardisation body such as ETSI).***

- Recitals 33

. ~~The~~ Virtual products ***can address*** various operational needs ~~served by should be addressed.~~ ~~As regards~~ Virtual broadband access products, ~~these~~ should be made available ***instead of existing wholesale access products*** where an operator with significant market power has been required under the terms of the Framework Directive and the Access Directive to provide access on regulated terms at a specific access point in its network. On the one hand, efficient cross-border entry should be facilitated by the definition of harmonised products ~~that require limited investment from the access seeker~~, so that a punctual and ad hoc solution to provide services across Member State borders is available to access seekers that want to provide such services to their end customers effectively, without delay and with a predictable and sufficient quality. Such products should be made available in accordance with harmonised parameters that allow integrated technical offers across borders, thus lowering barriers to entry into markets of other Member States, including in order to provide services to business customers with sites in multiple countries ***if and where a market analysis demonstrates that pursuant to an SMP-finding on relevant market the imposition of an according obligation would be necessary and proportionate in view of ensuring effective competition at retail level.*** The duration of the obligations to make these harmonised products available should also be sufficient to allow access seekers and providers to take into account medium and long term investment considerations.

- Recital 34

On the other hand, sophisticated virtual access products that require greater investment by access seeker and allow them greater levels of control and differentiation, particularly by providing access at a more local level, are key to creating the conditions for sustainable competition across the internal market ~~over the longer term~~, so that the provision of these key next generation products should also be harmonised to facilitate cross-border investment. Such virtual broadband access products should be designed to have equivalent functionalities to physical unbundling, in order to ~~broaden the range of potential provide a~~ proportionate ***alternative*** remedy available to national regulatory authorities under the Access directive.

1.2 Ensure that the requirements set out in Annex I and Art. 14 are proportionate, practical and do not increase the regulatory burden on the sector

Why is it important?

1) The product specifications for the European wholesale access product(s) will become directly binding EU law. To overburden the European product with requirements will limit its effectiveness as it would become disproportionate in many market circumstances and hence would not be imposed by NRAs or challenged before the Courts. Specific features requested in certain markets may not be justified as a regulatory remedy or necessary at all in others.

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2) A clarification should be added that “cost-effectiveness” in Art. 14 is not related to the provision of the products but the introduction of the new products, in order not to interfere with the provision on price regulation, Article 13 Access Directive.

Why is it not ensured under the current text?

Annex I contains requirements that might be appropriate in specific market circumstances, but would be disproportionate in other markets.

This is the case for the ‘multicast’ requirement in Annex I, Offer 1. Multicast requirements are not part of the regulation in many member states, and other solutions have been found to enable IP-TV delivery by the access seeker. The point of handover (very close to the customer or slightly higher up in the network) and the availability of Ethernet capacities that can carry audiovisual traffic impact the need for any such feature. To introduce multicast functionalities can create high technical complexity in the SMP-operators network. It has not been requested in many jurisdictions in access negotiations with access seekers and its implementation would raise costs for the product. Imposing it in an EU regulation would be clearly disproportionate.

Regarding Offer 2, there may be scope for defining specific QoS requirements of a product at layer 3 if the retail market analysis demonstrates the need for such quality of service features. Requiring several different QoS levels already in the regulation and without a demonstrated need for regulation on such different quality levels is disproportionate. The European wholesale access products should not lead to a multiplication of regulated access opportunities (s. above, pt. 1). Where regulation is not appropriate, wholesale products with specified quality can be obtained on commercial terms.

Changes to the text that could achieve the objective are listed below for illustration:

ANNEX I

MINIMUM PARAMETERS OF EUROPEAN VIRTUAL BROADBAND ACCESS PRODUCTS

1. OFFER 1 - Fixed network wholesale access product offered over next generation networks at Layer 2 of the International Standards Organisation seven layer model for communications protocols ('Data Link Layer'), that offers equivalent functionalities to physical unbundling, with handover points at a level that is closer to the customer premises than the national or regional level.

[...]

Network functionalities:

- flexible allocation of VLANs based on common technical specification;
- service agnostic connectivity, enabling control of traffic speed and symmetry;
- security enabling;
- flexible choice of customer premises equipment (as long as technically possible); and
- ~~multicast functionality.~~

[...]

2. OFFER 2: Fixed network wholesale access product offered at Layer 3 of the International Standards Organisation seven layer model for communications protocols ('Network Layer'), at the IP level bit-stream level with handover points offering a higher degree of resource aggregation ~~such as at national and/or regional level~~

[...]

Network functionalities:

- ability to support *different a specific* quality of service levels (*e.g. QoS 1, 2 and 3*) with regard to:

- delay;
- [...]

– **Art. 14 (1)**

Article 14 – European virtual broadband access product

1. Offers of virtual broadband access products imposed in accordance with Article 8 and 12 of Directive 2002/19/EC shall be deemed to be European virtual broadband access products if they cumulatively meet the following criteria:

[...];

4 capacity to serve end users *on competitive terms*

5 *cost-effectiveness; taking into account* the capacity to be implemented on existing and newly built networks *and to co-exist with other* ~~access products that may be provided on the same network infrastructure;~~⁴

[...]

2. ASQ connectivity product - remove reference to cost-effectiveness

Why is it important and not addressed in current text?

Reference to “cost-effectiveness” in Art. 15 undermines the possibility for value-based pricing at wholesale level and limits the attractiveness of the new product, as cost-based pricing could be requested in a dispute resolution.

Also, a general requirement to “meet needs of end-users of service providers” appears too unspecific and broad, leading to legal uncertainty. Any service provider would request the product to meet the needs of its end-users in the negotiations of access conditions, making it an unsuited ‘objective’ criterion that has to be met by the product.

The following changes to the current draft regulation would achieve these objectives (for illustration):

Article 15 – Assured service quality (ASQ) connectivity product

1. Any operator shall have the right to provide a European ASQ connectivity product as defined in paragraph 4 upon request.

[...]

4. Offers of connectivity products shall be deemed to be European ASQ connectivity products if they cumulatively meet the following criteria:

- (h) supply in accordance with the parameters listed in [Annex II];
- (i) ability to be offered as a high quality product anywhere in the Union;
- (j) *enabling service providers to meet the needs of their end-users;*
- (k) cost-effectiveness *of implementing the product*, taking into account existing solutions that may be provided on the same networks;

[...]

⁴ S. above pt. 1.1 for reasoning on the change. Art. 14 contains changes relevant both for pt. 1 and 2.

3. Lifting of price regulation for NGA wholesale products

Why is it important?

The rationale for the policy announcements of Vice-President Kroes of July 12 2012 was to lift price regulation for NGA networks in the presence of effective non-discrimination and a retail pricing constraint. In such situation, consumers are protected from excessive pricing and price flexibility at wholesale level opens the option of value-based pricing, allowing price differentiation by speed, data volumes, quality etc. without necessarily reflecting underlying cost differences, improving the business case for NGA investments.

Why is it not ensured under the current text?

Art. 28 (4) and Recital 17 show the intention of enshrining in EU law the principles of the draft Commission recommendation on non-discrimination and costing methodologies, in particular recognising the increasing role of wireless networks as a pricing constraint. It is also implicitly recognised in the proposal that EOI will often not be the proportionate form of non-discrimination and EOO can be effective in ensuring equivalence of access. The proposed wording of Article 13 AD, however, does not give clear guidance to lift price regulation in the presence of pricing constraints and effective non-discrimination. Moreover, the wording “*evolution of market conditions to the provision of competing NGA networks*” could be read as an additional condition for lifting price regulation and as such may not be helpful.

Changes to the text that could better achieve the objective are listed below for illustration (new text in colour):

- **Art. 28 (4)**

The first paragraph of Article 13 is amended as follows:

“A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. ***In determining whether to impose or maintain price controls on next generation networks, national regulatory authorities shall have regard in particular to the effectiveness of protection against discrimination, to the current and prospective state of infrastructure-based competition from other fixed line or wireless networks, and to the effects of such competition on the prices, choice and quality of access of products offered at retail level and on the evolution of market conditions towards provision of competing next generation networks.*** In the presence of an effective protection against discrimination and a retail pricing constraint from one or more alternative infrastructures, lift or not impose price controls on such networks. To encourage investments by the operator, including in next generation networks, national regulatory authorities shall take into account the investment made by the operator and allow him, ***in the event that the imposition of price control is deemed necessary to reach the objectives of Article 8 of the Framework Directive***, a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new network investment project.”

4. New Recital on the 3-criteria-test should give deregulatory guidance

Why is it important?

The three criteria constitute the dividing line to competition law and “*raison d’être*” of SMP-based sector-specific regulation. Discussing the economic criteria for ex-ante regulation in the legislative process should be accompanied by clear guidance on the purpose of the test, as otherwise a softening of the criteria and extension of regulation could result from the process. To the contrary, the regulation should ensure a restrictive interpretation of 3 criteria and recognise NGA infrastructure competition as trigger for deregulation under the three criteria

The following changes could help to achieve this objective (for illustration):

- Recital 16

Finally, it is to be expected that *increased investment* and intensified competition in a single market will lead to a *significant further* reduction over time in sector-specific regulation based on market analysis. Indeed, one of the results of completing the Single Market should be the normalisation of competitive conditions, with *ex post* application of competition law increasingly being seen as sufficient to ensure market functioning. In order to ensure legal clarity and predictability of regulatory approaches across borders, clear and binding criteria should be provided on how to assess whether a given market justifies the imposition of *ex-ante* regulatory obligations, by reference to the durability of bottlenecks and the prospects of competition, in particular infrastructure-based competition based on efficient investment. *Indeed, in the presence of two NGA networks, the market conditions are generally considered competitive enough to be able to evolve towards the provision of ultra-fast services. Infrastructure-based competition at retail level that is not dependent on regulation is typically a characteristic of sectors where ex-post competition law is sufficient to address potential market failure.* This should underpin successive reviews of the list of markets susceptible to *ex ante* regulation and help national regulators to focus their efforts where competition is not yet effective and to do so in a convergent manner.

- Recital 17 (deletion only in case the above changes are included in Rec. 16)

In the interests of regulatory predictability, key elements of evolving decisional practice under the current Framework should also be reflected in the legislation. These should include provisions reflecting the importance, for the *definition and* analysis of wholesale access markets, **SMP designation** and in particular *as regards the need for* price controls on such access to NGA networks, of the relationship between competitive constraints from alternative infrastructures, effective guarantees of non-discriminatory access, *including access to ducts*, and the level of competition in terms of price and quality at retail level. ~~*Indeed, in the presence of two NGA networks, the market conditions are generally considered competitive enough to be able to evolve towards the provision of ultra-fast services. [Footnote: EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, OJ 2013, C25, p. 1]*~~ The establishment of a European virtual broadband access product under this Regulation with equivalent functionalities, in terms of access to fixed NGA networks, to passive infrastructure access should also be reflected in the assessment by NRAs of the proportionality of alternative access remedies to the NGA networks of SMP operators.

5. Objectives and Scope

The provisions of the regulation should

Single Market for Electronic Communications – Technical comments on key provisions

- (1) contain a reference to the competitiveness of European industry
- (2) align the aims of innovation and investment in networks and services with that of competition in Article 8 of the Framework Directive

Why is it important and why is it not ensured under the current text?

Reference to competitiveness of an economic region as a whole (“the Union”) as currently contained in Article 2 is comprising multiple elements and is not emphasising the need for a healthy electronic communications sector, which is however indispensable for a sustainable network development in the EU. The reference to innovation and investment on the same level as competition in Article 8 (2) of the Framework Directive will help to ensure a more balanced regulatory practice taking better account of dynamic efficiencies.

The following changes could help to achieve this objective (for illustration):

- **Article 1 – Objective and scope**

[...]

2. This Regulation aims at unleashing the growth potential of a single market for electronic communications to the benefit of the entire economy of the Union.

In accordance with Articles 8 Paragraph 3 and 8a of the Framework Directive, this Regulation pursues in particular the policy objective and regulatory principle of securing simplified and convergent regulatory conditions regarding key administrative and commercial parameters, which take into due account the needs:

(a) to promote ~~sustainable competition and the competitiveness of the European digital industry to enhance~~ the global competitiveness of the Union *and to foster sustainable competition.*

[...]

(a) to promote *the competitiveness of the European digital industry to foster* the global competitiveness of the Union and safeguard sustainable competition;

- **Art. 30 (2) – Amendments to Directive 2002/21/EC**

2. Article 8 shall be amended as follows:

– **Paragraph 2 should be modified as follows**

The European Commission and the national regulatory authorities shall promote competition, innovation and investment in the field of electronic communications networks and services and foster the competitiveness of European digital industry by inter alia

– The following sub-paragraph shall be inserted between sub-paragraphs (b) and (d) of Paragraph 3:

(c) pursuing the objectives laid down in Article 1 of Regulation No [XXX/2014].

[...]

III. EU PASSPORT (Art. 2, 3-7 and 29)

Key requirements:

- Ensure that the application of an EU Passport is an **option** for electronic communications providers **and not mandatory**.

The current definition of an “European electronic communications provider” on **Art. 2 (1)** and the rules on the EU Passport on **Art. 3 (1)** are not clear concerning the fact that the EU Passport is an option for telecommunication operators.

Article 2 – Definitions

(1) “European electronic communications provider” means an undertaking *that has submitted an according notification to the competent regulatory authority, is* established in the Union providing or intending to provide electronic communications networks or services [...]

Annex II: Consumer Issues, Articles 17-24

Article	Justification
<p><i>Article 17 – No restriction or discrimination</i></p> <p>1. End-users shall not be restricted by public authorities in using public electronic communications networks or publicly available electronic communications services provided by an undertaking established in another Member State.</p> <p>2. Providers of electronic communications to the public in a given Member State shall not apply any discriminatory requirements or conditions of access or use, including charges and tariffs, to end-users based on the end-user's nationality or place of residence unless providers can demonstrate that differences are directly justified by objective criteria.</p> <p>3. Providers of electronic communications to the public shall not apply different charges within the same tariff to an end-user for electronic communications services other than regulated roaming services as between communications originating and terminating in the same Member State and communications originating in one Member State and terminating in another Member State, unless different charges are objectively justified by and reasonably proportionate to aggregate additional costs.</p>	<p>Art. 17.3 has a detrimental effect on revenue streams from these services. There is no economic justification for it. According to the first Recommendation on Relevant Markets, only fixed international calls were potentially subject to ex-ante regulation. In practice, these markets were quickly deregulated because of the choice available to consumers. The market for international calls is therefore competitive across the EU and there is no proportionality associated with the current proposal. Deletion of art. 17.3 is therefore proposed.</p>
<p><i>Article 18 - Cross-border dispute resolution</i></p> <p>1. The out-of-court procedures set up in accordance with Article 34 (1) of the Universal Service Directive shall also apply to disputes related to contracts between consumers and providers of electronic communications to the public which are established in another Member State. Other end-users may request that those procedures also apply to them.</p> <p>2. The out-of-court procedures in the Member State of the end-user's residence shall apply unless otherwise agreed by an end-user who is not a consumer.</p> <p>3. The dispute settlement bodies and the national regulatory authorities in all Member States involved in a cross-border dispute shall cooperate closely and expeditiously in solving it.</p>	

<p><i>Article 19- Bundled offers</i></p> <p>In case of a service bundle comprising at least a connection to an electronic communications network or one electronic communications service, the provisions of Chapters 3 and 4 of this Regulation shall apply to all elements of the bundle</p>	
<p><i>Article 21- Transparency and publication of information</i></p> <p>1. Providers of electronic communications to the public shall publish transparent, comparable, adequate and up-to-date information on:</p> <p>a) their name and head office address</p> <p>b) for each tariff the scope of the services offered and the relevant quality of service parameters, the applicable prices (for consumers including taxes) and any applicable charges (access, usage, maintenance and any additional charges), as well as costs with respect to terminal equipment,</p> <p>c) applicable tariff information to end-users regarding any number or service subject to particular pricing conditions, such information shall also be provided immediately prior to connecting the call;</p> <p>d) their compensation and refund policy, including specific details of any compensation or refund scheme</p> <p>e) available facilities to safeguard bill transparency and monitor the level of consumption</p> <p>f) quality of their services,</p> <p>g), with respect to their Internet access services:</p> <ul style="list-style-type: none"> - actually available data speed for download and upload in the end-user's Member State of residence, including speed ranges, speed averages and peak-hour speed; - the level of applicable data volume limitations, if any, the prices for increasing the available data volume on an ad hoc or lasting basis, the available data speed after full consumption of the applicable data volume, if limited, and how end-users can at 	<p>The focus should be on what is really in consumers' interest rather than on requirements that have no value-add but simply generate complex measurements arrangements</p> <p>Para. 1.c: Universal Service Directive mandates NRAs to execute such a measure. It is too premature to overhaul these recently implemented laws. Deletion of Para.1.c is therefore proposed</p> <p>Para. 1.d: This provision leads to no additional value for customers, since operators anticipate that publication of voluntary measures become binding. Deletion of Para.1.d is therefore proposed.</p>

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<p>any moment monitor the current level of their consumption;</p> <p>- a comprehensible explanation as to how any data volume limitation, the actually available speed and other quality parameters, and the simultaneous use of services with an enhanced quality of service, may practically impact the use of applications and services;</p> <p>- information on any procedures put in place by the provider to measure and shape traffic so as to avoid congestion of a network or the filling or overfilling of a network link, and on how those procedures could impact on service quality;</p> <p>h) measures taken to ensure equivalence in access for disabled end-users, including regularly updated information on details of products and services designed for them.</p> <p>i) their standard contract terms and conditions, including any minimum contractual period, the conditions for and any charges due on termination of a contract, the procedures and direct charges related to switching and portability of numbers and other identifiers, and compensation arrangements for delay or abuse of switching</p> <p>j) access to emergency services and caller location information for all services offered, any limitations on the provision of emergency services under Article 26 of Directive 2002/22/EC, and any changes thereto,</p> <p>k) available dispute settlement mechanisms, including those developed by the provider of electronic communications to the public,</p> <p>l) end-user right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC ;</p> <p>m) rights as regards universal service, including, where appropriate, the facilities and services mentioned in Annex I of the Universal Service Directive.</p> <p>Such information shall be published in a clear, comprehensive and easily accessible form in the language of the Member State where the service is offered, and be updated regularly. The information</p>	
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Annex II: Consumer Issues, Articles 17-24

<p>shall, on request, be supplied to the relevant national regulatory authorities in advance of its publication. Any differentiation between consumers and other end-users has to be made explicit.</p> <p>2. National regulatory authorities shall specify, inter alia, the quality of service parameters to be measured and the content, form and manner of the information to be published, including possible quality certification mechanisms, in order to ensure that end-users, including disabled end-users, have access to comprehensive, comparable, reliable and user-friendly information. The parameters, definitions and measurements methods shall be communicated to the Commission and BEREC. Where appropriate, the parameters, definitions and measurement methods set out in Annex III of the Directive 2002/22/EC shall be used.</p> <p>3. National regulatory authorities shall encourage the provision of comparable information to enable end-users to make an independent evaluation of the actual performance of their electronic communications network access and services and the cost of alternative usage patterns, for instance by means of interactive guides or similar techniques. National regulatory authorities shall accredit comparison providers on the basis of objective, transparent and proportionate criteria. Where accredited comparison facilities are not available on the market free of charge or at a reasonable price, national regulatory authorities shall make such guides or techniques available themselves or through third parties. Third parties shall have a right to use, free of charge, the information published by providers of electronic communications to the public for the purposes of selling or making available such interactive guides or comparison tools or similar techniques.</p> <p>4. Providers of electronic communications to the public shall offer end-users the opportunity to opt, free of charge, for a facility which provides information on the accumulated consumption of different electronic communications services expressed in the currency in which the end-user is billed. Such a facility shall guarantee that, without the end-user's consent, the accumulated expenditure over a specified period of use does not exceed a specified financial limit set by the end-user.</p> <p>5. Providers of electronic communications to the</p>	<p>Para. 4 and 5: USD 2009 mandates NRAs to execute such a measure. It is too premature to overhaul these recently implemented rules. Deletion of Para. 4 and 5 is therefore proposed.</p> <p>It is important that information provided should be easily understandable and meaningful for end-users.</p>
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<p>public shall ensure that an appropriate notification is sent to the end-user when the consumption of services has reached 80% of the financial limit set. The notification shall indicate the procedure to be followed to continue the provision of those services. The provider shall cease to provide and to charge the end-user for the specified services if the financial limit would otherwise be exceeded, unless and until the end-user requests the continued or renewed provision of those services. Unless otherwise agreed by the end-user, a minimum agreed level of service shall still be available for internet access.</p> <p>6. Providers of electronic communications to the public shall distribute public interest information free of charge to end-users, where appropriate, by the same means as those ordinarily used by them in their communications with end-users. In such a case, that information shall be provided by the relevant public authorities to the providers of electronic communications to the public in a standardised format and shall, inter alia, cover the following topics:</p> <p>(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related rights, and their legal consequences; and</p> <p>(b) the means of protection against risks to personal security, privacy and personal data when using electronic communications services.</p>	
<p><i>Article 22- Contracts</i></p> <p>1. End-users subscribing to services providing connection to a public electronic communications network or publicly available electronic communications services, have a right to a contract with the undertaking providing such connection or services. Unless otherwise agreed by an end-user who is not a consumer, providers of electronic communications to the public shall provide in contracts, and update regularly, in a clear, comprehensive and easily accessible manner and in the languages of the end-user's Member State of residence, at least the following information:</p>	<p>Article 22 needs to be rebalanced in order to focus on what is really in the consumers' interest rather than on requirements with no value-add that simply generate complex measurements arrangements. In particular it is important to keep in mind that information provided should be easily understandable and meaningful for end-users. The draft proposal risks information overload and could be confusing rather than informative (e.g. information jitter etc.)</p> <p>Para.1: The obligation to contract with end-users is unacceptable in principle. The sentence should therefore be deleted. Also, the provisions on contract information replace the USD 2009 rules,</p>

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<p>(a) the identity, address and contact information of the undertaking;</p> <p>(b) the services provided, including in particular:</p> <ul style="list-style-type: none">— whether and in which Member States access to emergency services and caller location information is being provided, any limitations on the provision of emergency services under Article 26 of Directive 2002/22/EC, and any changes thereto;— the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters;— the types of maintenance service offered and customer support services provided, as well as the means of contacting these services;— any restrictions imposed by the provider on the use of terminal equipment supplied, including the information on unlocking the terminal equipment and charges involved; <p>(c) where an obligation exists under Article 25 of Directive 2002/22/EC, the end users' options as to whether or not to include their personal data in a directory, and the data concerned;</p> <p>(d) details of prices and tariffs (for consumers including taxes), the means by which up-to-date information on all applicable tariffs and maintenance charges is made available, payment methods offered and any differences in costs due to</p>	<p>without due justification. Such provisions should therefore be deleted.</p>
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<p>payment method, and details of bill transparency safeguards;</p> <p>(e) the duration of the contract and the conditions for renewal and termination of services and of the contract applied in accordance with this Regulation, including:</p> <ul style="list-style-type: none">— any minimum usage or duration required to benefit from promotional terms;— any charges related to switching and portability of numbers and other identifiers, including compensation arrangements for delay or abuse of switching;— any charges due on termination of the contract, including any cost recovery with respect to terminal equipment (on the basis of customary accounting principles for depreciation) and other promotional advantages (on a pro tempore rata basis); <p>(f) any compensation and the refund arrangements, including an explicit reference to statutory rights of the end user, which apply if contracted service quality levels are not met;</p> <p>(g) for disabled end users, details of products and services designed for them;</p> <p>(h) the means of initiating procedures for the settlement of disputes, including cross border disputes, in accordance with Article 34 of Directive 2002/22/EC and Article 18 of this Regulation;</p>	
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<p>(i) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.</p> <p>2. In addition to paragraph 1, providers of electronic communications to the public shall provide end-users, unless otherwise agreed by an end-user who is not a consumer, at least the following information with respect to their Internet access services:</p> <ul style="list-style-type: none">- the level of applicable data volume limitations, if any, the prices for increasing the available data volume on an ad hoc or lasting basis, the available data speed after full consumption of the applicable data volume, if limited, and how end-users can at any moment monitor the current level of their consumption;- the actually available data speed for download and upload at the main location of the end-user, including actual speed ranges, speed averages and peak-hour speed;- other quality parameters, at least latency (average delay), jitter (delay variation) and packet loss;- information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid congestion of a network/filling or overfilling a network link, and information on how these procedures could impact on service quality;- and a comprehensible explanation as to how any volume limitation, the actually available speed and other quality parameters, and the simultaneous use of services with an enhanced quality of service, may practically impact the use of applications and services. <p>3. The details of the information requirements under paragraph 2 shall be ensured by national regulatory authorities.</p> <p>4. The contract shall also include, upon request by the relevant public authorities, any information provided by these authorities for this purpose on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy</p>	<p>Provisions in Para 2 are very costly, technically difficult to implement and are not useful for consumers.</p>
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<p>and personal data, referred to in Article 21(5) of this Regulation and relevant to the service provided.</p>	
<p><i>Article 23 - Contract termination</i></p> <p>1. Contracts concluded between consumers and providers of electronic communications to the public shall not mandate an initial commitment period that exceeds 24 months. Providers of electronic communications to the public shall offer end-users the possibility to subscribe to a contract with a maximum duration of 12 months.</p> <p>2. Irrespective of the initial contract period consumers, and other end-users unless they have otherwise agreed, shall have the right to terminate a contract with a one-month notice period, where six months or more have elapsed since conclusion of the contract. In such cases, no compensation shall be due other than for the residual value of subsidised equipment bundled with the contract at the moment of the contract conclusion and a pro rata tempore reimbursement for any other promotions. Any restriction on the usage of terminal equipment on other networks shall be lifted, free of charge, by the provider at the latest upon payment of such compensation.</p> <p>3. If contract periods may be extended tacitly, the provider of electronic communications to the public shall inform the end-user in due time so that the end-user has at least one month to oppose to a tacit extension. In case the end-user does not oppose, the contract shall be transformed into a permanent contract which can be terminated with a one-month notice.</p> <p>4. End-users have the right to terminate their contract without penalty upon notice of modification to the contractual conditions proposed by the provider of electronic communications to the public save where the proposed modifications are exclusively to the benefit of the end-user. Providers shall give end-users adequate notice, not shorter than one month, of any such modification, and shall inform them at the same time of their right to terminate, without penalty, their contract if they do not accept the new conditions.</p> <p>5. Any significant and permanent non-temporary discrepancy between the advertised and actual performance regarding speed or other quality</p>	<p>Note: the 6 month rule may result in a decreasing number of end-users with long-term contractual commitments and a higher churn rate.</p> <p>In mobile networks a guarantee of data transmission capacity is technically not possible. The word "permanent" defines the time period of</p>

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<p>parameters shall be considered as non-conformity of performance for the purpose of determining the end-user remedies in accordance with national law.</p> <p>6. The subscription to additional services provided by the same provider of electronic communications to the public shall not re-start the initial contract period unless the price of the additional service(s) significantly exceeds that of the initial services or such additional services are offered at a special promotional price linked to the renewal of the existing contract.</p> <p>7. Conditions and procedures for contract termination shall not act as a disincentive against changing service provider.</p>	<p>discrepancy in a more comprehensible way for consumers and providers.</p>
<p><i>Article 24- Switching and portability of numbers</i></p> <p>1. All end-users with numbers from a national telephone numbering plan who so request can retain their number(s) independently of the provider of electronic communications to the public providing the service in accordance with the provisions of Part C of Annex I the Universal Service Directive, provided it is an electronic communications provider in the Member State to which the national numbering plan relates or is a European electronic communications provider which has notified to the competent home Member State regulatory authority the fact that it provides or intends to provide such services in the Member State to which the national numbering plan relates. The right to port shall be immediate.</p> <p>2. Pricing between operators and/or service providers related to the provision of number portability shall be cost-oriented, and direct charges to end-users, if any, shall not act as a disincentive for end-users against changing service provider.</p> <p>3. Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. End-users who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day from the conclusion of such agreement and loss of service during the process of porting, if any, shall not exceed one working day.</p> <p>4. The receiving provider of electronic</p>	<p>Para. 1 to 3 represent a very negative intervention into the freedom to contract and established switching processes. They are technically difficult to implement and very costly. The effects of new rules from USD 2009 should be analysed before introducing additional new rules. Deletion is therefore proposed.</p>

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<p>communications to the public shall lead the switching process. End-users shall receive adequate information on switching, before and during the switching process, and also immediately after it is concluded. End-users shall not be switched to another provider against their will.</p> <p>5. The contracts with transferring providers of electronic communications to the public shall be terminated automatically after the conclusion of the switch. Transferring providers of electronic communications to the public shall transfer any remaining credit to those consumers using pre-paid services.</p> <p>6. Providers of electronic communications to the public which delay or abuse switching, including by not making information necessary for porting available in a timely manner, shall be obliged to compensate end-users being exposed to such delay or abuse.</p> <p>7. In cases where an end-user switching to a new provider of Internet access services has an email address provided by the transferring provider, the latter shall, upon request by the end-user, forward to any email address indicated by the end-user, free of charge, all email communications addressed to the end-user's previous email address for a period of 12 months. This email forwarding service shall include an automatic response message to all email senders alerting them about the end-user's new email address. The end-user shall have the option to request that the new email address is not disclosed in the automatic response message. Following the initial 12 months period, the transferring provider of electronic communications to the public shall provide the end-user with an option to extend the period for the provision of email forwarding at a charge. The transferring provider of electronic communications to the public shall not allocate the end-users' initial email address to another end-user before a period of [2 years] following contract termination, and in any case during the period for which the email forwarding has been extended.</p> <p>8. Without prejudice to paragraphs 1 to 7, competent national authorities may establish the global processes of switching and/or porting, including provision of appropriate sanctions on undertakings and compensations for end-users, taking into account end-user interests including</p>	<p>Para 5 represents another very negative intervention into the freedom to contract and established switching processes. It is technically difficult to implement and very costly. The effects of new rules from USD 2009 should be analysed before introducing additional new rules. Deletion is therefore proposed.</p> <p>Para 7 is redundant, since every email service already allows this today. Deletion is therefore proposed.</p> <p>Provisions of Para 8 are already being implemented by USD 2009. Deletion is therefore proposed.</p>
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necessary end-user protection throughout the switching process and the need to ensure efficiency of such process.	
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